

REMARKS

Reconsideration of the application is requested in view of the the remarks below. Claims 40-47 are pending.

Rejection of Claims 31-39 Under 35 USC 112, second paragraph

The Office Action rejected Claims 40, 43, 45 and 47 under 35 USC 112, second paragraph, on the grounds that the phrase "acrylate dispersions" rendered the claims indefinite. Applicants respectfully disagree. When read in light of the specification, the term "acrylate dispersions" would be readily understood by one of ordinary skill in the art. Reconsideration is requested.

Rejection of Claims 40-47 Under 35 USC 103

1. **Rejection Under 35 USC 103 over U.S. Pat. No. 3,113,399 (Eversole) in view of US Pat No. 5,972971 (Heuer et al).**

The Office Action rejected Claims 40-47 under 35 USC 103 over U.S. Pat. No. 3,113,399 (Eversole et al) in view of US Pat No. 5,972971 (Heuer et al). The rejection should be withdrawn in view of the remarks below.

The Office Action indicates that Eversole et al differs from the claimed invention as per the non-express disclosure of an embodiment directed to the specifically defined (A) components (Office Action, page 3, lines 9-12). The Office Action then alleges that Heurer et al teach that fungicidal compounds, viz. sulfenamides such as dichlorofluanid, flurofolpet, and captan are well know equivalents for use against wood-destroying fungi (Office Action, page 3, lines 13-15). Further the Office Action alleges it would have been obvious to the skilled artisan to swap the captan per Run II for any of the antecedently recited fungicides disclosed as operable equivalents per Heurer et al and with a reasonable expectation of success with the understanding that one of ordinary skill in the art would have readily envisioned the use of the oil-modified alkyd resin used in Run VII in lieu of the maleic anhydride modifying drying oil per Run II (Office Action, page 3, lines 16-22).

Eversole does not deal with storage stable formulations. In fact, Eversole et al teaches away from Applicants' claimed invention. Eversole et al discloses a seed coating including a maleic anhydride modified oil and Captan. The seed coating is prepared and immediately mixed with the seed corn and tumbled in a paint roller (Col. 27-31) Thus, there is no need for any storage of the seed coating. Eversole et al does not contribute anything to the solution of the problem how to prepare storage stable formulations of hydrolysis sensitive substances. Eversole et al lacks the teachings that would have motivated one of ordinary skill in the art following Eversole et al to modify Eversole and make or practice Applicants' invention.

The inventors of the present invention surprisingly realized that in the presence of the specific binders the sensitive compounds dichlofluanid, tolylfluanid, and fluorofoipet are storage stable in aqueous medium over a long time period. This result could not be foreseen from the knowledge of Eversole et al .

Regarding Heuer et al, Heuer et al discloses mixtures of a specific azole compound with insecticides to protect wood, and as discussed above with reference to Eversole et al, does not deal with storage stable formulations. Heuer et al merely discloses a rather lengthy cataloging-type list of fungicides including dichlorofluanid, tolylfluanid, folpet, fluorofoipet, captan and captol (Col. 4). The Office Action allegation that it obvious to replace the fungicide compound under Heuer et al and to arrive at Applicants' invention is not supported.

Further, in light of the preceding discussion, even if Eversole et al and Heuer et al were combined, Applicants' presently claimed aqueous system and method related to an aqueous system would not result in the absence of the impermissible use of hindsight reconstruction. "To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher." W.L. Gore & Assoc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-313 (Fed.Cir.1983). One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed

invention. In re Fine, 837 F.2d 1071, 1075 (CAFC, 1988). Reconsideration is requested.

Rejection of Claims 40-47 Under 35 USC 102(e) or alternatively 103(a)

1. Rejection Under 35 USC 102(e) as anticipated by or in the alternative under 35 USC 103(a) as obvious over U.S. Pat. No. 5,990,143 (Ludwig et al).

The Office Action rejected Claims 40-47 under 35 USC 103 over U.S. Pat. No. 5,990,143 (Ludwig et al). The rejection should be withdrawn in view of the remarks below.

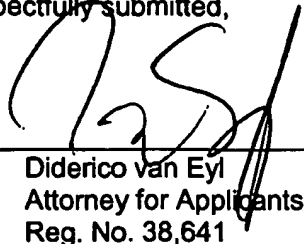
The present invention is directed to solving the problem of hydrolysis sensitive compounds that could not be used in "ready to use" water based compositions and paints. The waterbased "ready to use" compositions are made for direct application by the end user and must be storage stable over a long time period. Applicants' invention provides a solution for this problem.

Ludwig et al does not teach or suggest how to prepare ready to use formulations of the hydrolysis sensitive compounds of dichlofluanid, tolyfluanid and fluorfolpet. Ludwig et al discloses waterbased solvent and emulsifier-free microbicidal active compound formulations based on azole fungicides and at least one quaternary ammonium fungicide of a specific formula. Among an extensive list of other compounds, binders as synthetic resins or acrylic resins and mixing partners including sulfenamides, the combination of Applicants' invention is not disclosed. In fact, there is no motivation or suggestion to combine the hydrolysis-sensitive compounds and specific alkyd resin and/or acrylat dispersion binders of the present invention. For example, Ludwig et al discloses in examples 1-4 only combinations of quaternary ammonium fungicides with tebuconazole. Furthermore, Ludwig et al would not motivate one skilled in the art to stabilize the hydrolysis-sensitive compounds with the specific binders of Applicants' invention.

In view of the foregoing amendments and remarks, allowance of the pending claims is earnestly requested.

Respectfully submitted,

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